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No. 80-988

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HAVENS REALTY CORPORATION and
ROSE JONES,
Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and
HOUSING OPPORTUNITIES MADE EQUAL,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

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ARGUMENT

I. SINCE RESPONDENTS REQUESTED BOTH MONETARY AND INJUNCTIVE RELIEF NOT GRANTED IN *COLES V. HAVENS REALTY CORP.*, THIS CASE IS NOT MOOT.

Amici Lawyers Committee for Civil Rights Under Law, *et al.*, and the United States have argued that the matters before this Court are, or may be, moot.[1] The basis for amici's

[1] Properly considered, mootness involves a determination of whether the plaintiff's injury continues unredressed, and a case may become moot either because plaintiff no longer suffers injury and it is unlikely to recur, *see e.g. Securities and Exchange Commission v. Medical Committee for Human Rights*, 404 U.S. 403 (1972), or because the injury suffered by the plaintiff has been redressed, *see e.g. Indiana Employment Security Division v. Burney*, 409 U.S. 540 (1973).

argument is a Consent Order, entered in *Coles v. Havens Realty Corp.*, No. 79-0024 (E.D.Va., February 17, 1981), reprinted in 3 E.O.H.C. ¶18,031 (P-H) (also reprinted in Appendix A to Brief for the United States as Amicus Curiae herein) (hereafter "*Coles*"). In the *Coles* case, Paul Allen Coles, a black man who had sought housing from petitioners, joined respondents' suit against petitioners. After respondents were dismissed from the suit, and final judgment was entered against them, Paul Allen Coles' action continued in the district court. Following trial and findings of fact by the district court, judgment against the defendants was entered in August, 1980, and a timely appeal taken (App. 8).[2] Subsequently, a consent order was entered by the district court on February 17, 1980, providing for certain injunctive and monetary relief for Paul Allen Coles and members of the class he represented (App. 10).[3]

It is absolutely clear that the relief requested by respondents herein was not granted in the Consent Order. In addition to injunctive relief, all respondents requested monetary relief, praying for a judgment:

> (e) awarding to each of the tester plaintiffs Sylvia Coleman and R. Kent Willis the sum of $1,000 in actual damages and $1,000 in punitive damages;
>
> (f) awarding to HOME its expenses of testing and monitoring defendants' practices and its expenses pursuant to this litigation;
>
> (g) awarding to plaintiffs their costs and reasonable attorney fees in this action.

(App. 20). None of this relief is granted in the Consent Order. *Coles.* Furthermore, all injunctive relief requested by the respondents was not granted in the Consent Order. *Coles;* App. 19.

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[2] All references to pages numbered "App." are to the Joint Appendix.

[3] A class composed of all black persons who may have been injured monetarily by the alleged racial steering practices of the defendants on or since January 9, 1977, was certified on February 13, 1980. *Turner v. A. B. Carter, Inc.*, 85 F.R.D. 360 (E.D.Va. 1980).

The concept of mootness arises from the constitutionally mandated limitation on the jurisdiction of federal courts to "cases" and "controversies" between the litigants. *DeFunis v. Odegaard,* 416 U.S. 312, 316 (1974). As this Court's decision in *Powell v. McCormack,* 395 U.S. 486, 495-500 (1969), makes clear, a live controversy remains in this case, although one of several forms of requested relief is unnecessary or unavailable. Furthermore, the United States' characterization of the injunctive relief requested by respondents as "the primary relief sought," Brief for the United States at 8, even if correct, is irrelevant. The argument that secondary claims are mooted by the mootness of primary claims was expressly rejected by this Court in *Powell v. McCormack,* 395 U.S. at 499-500. *See also Bond v. Floyd,* 385 U.S. 116, 128 n.4 (1966). Thus it is clear that, although certain injunctive relief was granted on behalf of Paul Allen Coles and his class, the remaining claims pressed by respondents are not moot. Respondents requested damages and injunctive relief against petitioners. That relief has not been granted, and indeed petitioners contend that respondents should not be permitted to proceed to the merits of their case because they lack standing. Clearly, the case remains "definite and concrete, touching the legal relations of parties having adverse legal interests." *Aetna Life Insurance Company v. Haworth,* 300 U.S. 227, 240-41 (1937).

The Lawyers Committee for Civil Rights Under Law further suggests that this case is moot by virtue of certain language in the *Coles* Consent Order stating that payment of the amounts specified in the Consent Order "shall constitute a full release, accord and satisfaction by all plaintiffs . . . for all damages, costs, expenses and fees . . . arising out of the Complaint filed herein." Brief for Lawyers Committee for Civil Rights Under Law at 9. The respondents were not parties to the *Coles* matter at the time the Consent Order was entered, and that decree patently could not bar their claims for damages, were they proper parties to assert those claims.

The Lawyers Committee also lists several "advantages" to dismissing the writ as improvidently granted, primarily related to petitioners' arguments that respondents simply have not alleged concrete facts from which a district court could have

concluded that respondents have standing to maintain this action. Brief for Lawyers' Committee for Civil Rights Under Law at 10. Although amicus refers to the total absence of such facts as "the ambiguities of the record," *id.*, it is absolutely clear that the record below was made by respondents' own choice. It is in no sense ambiguous. Respondents' chose in the district court, and indeed in the circuit court, to stand on their complaint as filed, making no effort to amend the complaint or file affidavits to support their standing. *See* argument *infra* at 6. Although they apparently wish they had acted differently, their desire to rectify their errors comes too late. A decision in this case must be rendered to correct the errors made by the Fourth Circuit Court of Appeals.

The United States as amicus also suggests that, even if all of the relief sought by respondents has not been granted, the *Coles* Consent Order "greatly reduces the practical importance of the respondents' claims," and that the writ should be dismissed. Brief for the United States at 8. The suggestion that this case lacks "practical importance" is astonishing, for several reasons, even aside from those of the parties themselves. First, the decision of the Court of Appeals for the Fourth Circuit patently ignores mandatory constitutional limitations on standing and that decision must be reversed. The importance of these constitutional issues, not only in the context of this case, but in the broader context of standing law generally, is tremendous. Second, in addition to the United States, thirty-seven organizations believe the case to be of sufficient "practical importance" to file or join in briefs expressing the position of their organizations or members on the issues raised in this case. Each claims that the issues are of broad social relevance. In short, the United States' attempt to denigrate the importance of the constitutional and federal statutory issues of this case should be ignored.[4]

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[4] Amicus also suggests that because Arthur E. Havens, Jr.'s real estate license was suspended for six months, the "practical importance" of the case is further reduced. Brief for the United States at 8 n.7. However, Mr. Havens is not a party to this case, and, in fact, Mr. Havens voluntarily surrendered his

(*footnote continues*)

The controversy between petitioners and respondents in this case is alive and involves important questions of constitutional and federal law. No reason appears why these issues should not be decided.

II. A MOTION TO DISMISS FOR LACK OF STANDING IS PROPERLY GRANTED WHEN A DISTRICT COURT CANNOT REASONABLY CONCLUDE, FROM THE COMPLAINT AND SUPPORTING AFFIDAVITS, IF ANY, THAT THE PLAINTIFFS HAVE STANDING.

Respondents argue that the motion to dismiss for lack of standing was not properly granted because respondents should have been allowed "to develop key aspects of the complaint." Brief for Respondents at 14.[5] Indeed, respondents' argument suggests that a motion to dismiss for lack of standing should *never* be granted because of the potential complexity of facts relating to standing. Brief for Respondents at 14 and 16. This argument results from misconceptions concerning the concept of standing itself in its constitutional dimension, as well as the proper function and role of a motion to dismiss.

(*footnote continued*)

real estate license to avoid further time, expense and publicity upon the express condition, to which the Virginia Real Estate Commission agreed, that no action be taken by the Commission against Havens Realty Corporation or the licenses of Mr. Havens' wife and son. The voluntary and temporary surrender of Mr. Havens' license thus does not affect in any way the continuing controversy between the parties to this case.

[5] Respondents suggest that the district court's dismissal was the more odious because they requested an opportunity to develop such facts. The "request" consists of a footnote in their memorandum in opposition to the motion to dismiss, which was not timely filed. The footnote read:

> Since the defendants have declared their intention to depose a designated official of HOME on February 27, 1979, it is likely that further factual support for HOME's standing will be available for this Court's consideration. Accordingly, plaintiffs respectfully request that any ruling on this point be deferred pending this discovery.

(App. 51). It is difficult to understand how respondents intended to "develop key aspects" of their complaint in a deposition taken by petitioners. Furthermore, all facts supportive of respondents' standing were known by respondents or within their control.

In its constitutional dimension, U.S.Const. art. III, standing involves the power of federal courts to exercise jurisdiction in the matter. When it appears at the outset that the court may not properly exercise jurisdiction, the case should be dismissed. This is not to suggest that a plaintiff must prove his case to get into court. It *is* to suggest, however, that a plaintiff must allege sufficient facts for a court to reasonably conclude that jurisdiction exists or must supply those facts by affidavit in response to a motion to dismiss. *See Warth v. Seldin*, 422 U.S. 490, 501-502 (1975). To suggest that a court should bring to bear on a defendant all of the coercive force of the federal judiciary with no idea whether that force is properly called into play is nonsensical. Standing is a threshhold issue precisely because a court should not attempt to exercise jurisdiction where it does not exist, and where the jurisdiction is in doubt, it is asking but little for the plaintiff to demonstrate at the outset by what right he calls upon the court. Clearly, dismissal is not proper where a plaintiff provides the court with reasonable grounds for believing jurisdiction exists. Just as clearly, dismissal is mandated where, as in this case, a plaintiff makes no effort to provide the court with those grounds.

Furthermore, respondents cannot blame the district court for a hasty dismissal of their complaint before they had an opportunity to present the facts they now present for the first time in this Court. Respondents could and should have included in their complaint the relevant facts to support their standing. Since they did not do so, a proper motion to dismiss for lack of standing was filed. In response to the motion to dismiss, respondents made no attempt to file affidavits deemed supportive of their position.[6] Even in the face of an order dismissing the complaint, respondents, in their motion to reconsider, failed to submit for proper consideration by the district court the facts on which they now rely (App. 36-54). Again, they argued that the complaint was sufficient on its face (App. 38-54). Although respondents also complain that the district court should have allowed amendment of the complaint, respondents never sought to amend. In the circuit court,

[6] In fact, respondents did not respond to the motion to dismiss within the time prescribed by the local rules of court (App. 36-7, 55).

respondents again defended the complaint on its own merits. Apparently now realizing that a district court could not have concluded from the complaint that respondents have standing, they seek to have this Court determine the facts and affirm the decision of the circuit court based on facts and arguments raised here for the first time.

Under axiomatic principles, this Court cannot, and properly should not, consider facts and issues not presented in the courts below or contained in the record. *See e.g. Lawn v. United States*, 355 U.S. 339, 354 (1958). Respondents' brief and those of amici are replete not only with such facts, but also with issues of law not briefed or argued below. In fact, respondents are apparently unable to demonstrate that they have standing to bring this action on *any* of the myriad grounds asserted below without the assistance of facts and arguments which they failed to present to the district court or even to the circuit court. In short, respondents wish to argue before this Court a case which they made no attempt to present below. Under our system, facts are presented in the trial court—not the United States Supreme Court. Remanding this case would make a mockery of the federal judicial system.

Furthermore, respondents' attempt to distinguish this case from other cases in which this Court has affirmed a district court's dismissal for lack of standing, Brief for Respondents at 16-18, begs the question. Respondents argue that their complaint was not "fundamentally flawed," whereas the complaints in cases in which dismissal was affirmed were "structurally defective," because they failed to allege one of the three elements of standing. Brief for Respondents at 17. The question in this case is *whether* respondents' alleged sufficient facts for the district court to reasonably conclude that they had suffered distinct and palpable injury caused by defendants' acts which is likely to be remedied by the relief requested. Obviously, as respondents note, Brief for Respondents at 17 n.14, some cases have reached this Court following granting of a motion to dismiss for lack of standing, and the dismissal has been affirmed. *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974); *United States v. Richardson*, 418 U.S. 166 (1974);

Linda R. S. v. Richard D., 410 U.S. 614 (1973). Other cases have reached this Court in a different procedural posture, and information other than the complaint was available. *Warth v. Seldin*, 422 U.S. 490 (1975); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). These observations do not assist in determining the standing issues in this case: were Coleman, Willis and HOME properly dismissed as plaintiffs because they failed to allege facts from which a district court could reasonably have concluded that they had standing.

Finally, respondents and amici, The National Committee Against Discrimination in Housing, Inc., *et al.*, argue that the notice pleading standard first articulated in *Conley v. Gibson*, 355 U.S. 41, 47 (1957), is applicable to this case and that, therefore, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. at 45-46. Indeed, respondents appear to argue that, as long as the complaint states that plaintiff is injured, the complaint is sufficient and the other elements of standing can await trial. Brief for Respondents at 23-25. Although this Court has not directly addressed the standing question in light of what must be pled, *Warth v. Seldin*, 422 U.S. at 508, clearly states that a plaintiff "must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit from the court's intervention" (emphasis in original). That statement from *Warth* has become a maxim expressing the principal that the basic elements of a plaintiff's standing must appear in the complaint. The rule is compelled for the reasons expressed earlier in this brief with respect to the role and function of a motion to dismiss for lack of standing: the constitution imposes limits on the exercise of jurisdiction by the federal judiciary; the court should not act in the absence of reasonable grounds for believing it does so properly. *See supra* at 6.

The fact that standing is a jurisdictional question indicates that a somewhat different pleading standard should be applicable—the issue is not whether the defendant has been given sufficient information to understand the nature of the claim

against him. Rather, the issue is whether the defendant and, more importantly, the court itself, can determine at the outset that its coercive power is not invoked for some reason other than to adjudicate cases or controversies between litigants. Thus, the appropriate rule with respect to pleading standing, as with all jurisdictional prerequisites, is that the complaint must affirmatively and distinctly show the basis for standing. That basis cannot be supplied by inference or by argument. *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912); *Thomas v. Board of Trustees of the Ohio State University*, 195 U.S. 207, 210 (1904). Respondents' complaint did not affirmatively and distinctly show the basis for their standing, nor did respondents seek to supply that basis by amendment or affidavit. The complaint was properly dismissed.

For example, HOME in its brief on the merits produces myriad facts not in the record in this case upon which it then relies for the proposition that its alleged injury is sufficient to confer standing in its own right. These facts, of course, cannot be considered. *See supra* at 7. Furthermore, even in all the facts improperly submitted to describe the counseling service on which HOME now relies, there is no allegation which suggests that HOME's counseling service, as opposed to its testing activities, is affected by the allegedly wrongful acts of petitioners. Nowhere is it alleged that HOME has attempted to place clients in Camelot or Colonial Court. Nowhere is it even alleged that Havens seeks to place clients in a geographic area affected by petitioners' alleged practices or in similar housing types. Respondents cannot satisfy constitutional standing requirements by vague allegations about its injury or the relationship between that injury and petitioners' alleged acts. HOME cannot ask that the court speculate as to the essential elements of its standing.

Similarly, in addressing HOME's standing to represent the rights of members who have been deprived of the benefits of interracial association, HOME and amici curiae, the City of Richmond and the National Committee Against Discrimination in Housing, suggest that this Court can *assume* the standing of HOME's members, and assume specifically that some HOME members reside in areas affected by Havens' alleged wrongful

acts. Brief for Respondents at 40-41; Brief for the City of Richmond at 7; Brief for the National Committee Against Discrimination in Housing at 26. Indeed, HOME now states in its brief that a member of HOME lives in Camelot Townhouses. Brief for Respondents at 40 n.37. HOME never sought to introduce such facts at the district court level, no doubt because its standing was not predicated on a representational standing theory. It cannot now ask this Court to speculate on facts not pled or otherwise offered, to support theories not argued below.

Furthermore, the only injury alleged by Coleman and Willis in the complaint is that they were deprived of the benefits of interracial association by petitioners' alleged steering.[7] As demonstrated in the Brief for Petitioners at 26-32, Coleman and Willis have alleged no plausible connection between their alleged injury and petitioners' acts. That such reasonable allegations of causal relationship are necessary is exemplified by this case, in which the facts alleged cannot, without more, lead logically to the conclusion that there is any causal nexus between the injury alleged and the defendants' acts. This is *not* to say, however, as respondents' wrongly interpret petitioners' position, that a "rigid geographic standard" should be imposed. Brief for Respondents at 25. Each plaintiff's standing must be determined in light of the circumstances, and a rule which precluded the sufficiency of reasonable allegations of injury to a broad geographic area would be as erroneous as one which held that *any* allegation of causal nexus is sufficient, no matter how incredible. For example, in

[7] Respondents in their brief at 22-24, misconstrue petitioners' argument that Coleman and Willis have alleged no injury in their status as testers. Petitioners do not suggest that testers do not have standing *per se* because they are testers. Rather, petitioners argue that Coleman's and Willis' status as testers is irrelevant to the standing question. Being testers is no disability to standing, as *Pierson v. Ray*, 386 U.S. 547 (1967); *Evers v. Dwyer*, 358 U.S. 202 (1958); and, indeed, *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), make clear. Nor does being testers automatically confer standing, as the Court of Appeals for the Fourth Circuit held in this case. Rather, testers have or lack standing because of the presence or absence of a distinct and palpable injury caused by the wrongful acts of which complaint is made. The Fourth Circuit erroneously held that Coleman and Willis have standing because they are testers. That decision must be reversed.

Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc., 422 F.Supp. 1071 (D.N.J. 1976), allegations of injury to an entire metropolitan county were properly held to be sufficient where defendants were four multiple listing services and five brokerage agencies which allegedly constituted the entire real estate industry in the county. 422 F.Supp. at 1074. It is not unreasonable to conclude that the entire real estate industry of a county, acting in concert, may affect the entire county by discriminatory housing practices. A similar conclusion would not be reasonable in the case at bar.

Although petitioners recognize that this Court cannot consider facts not presented below, and have avoided introducing such facts, even to counter facts improperly presented here by respondents, one particular allegation in respondents' brief aptly demonstrates why reasonable allegations of causal connection are necessary. With respect to the residence of Coleman and Willis, the complaint states only that they are "residents of the City of Richmond *or* Henrico County" (App. 13) (emphasis added), and that Havens' two apartment complexes are in Henrico County (App. 14). In footnote 19 of their brief, respondents add the further detail that "Coleman and Willis both reside in moderate income neighborhoods in the area north of the James River." Brief for Respondents at 23. On this fact, respondents attempt to predicate a reasonable causal connection between respondents' alleged deprivation of the benefits of interracial association and Havens' acts.

In fact, when Coleman's deposition was taken in the *Coles* case on March 7, 1979, she owned her own home at 1707 Mechanicsville Pike, in a neighborhood of two-story single family detached houses in the east end of the City of Richmond, approximately 14 miles from Camelot and Colonial Court. She apparently resides there now, although when her deposition was taken in a companion case on July 26, 1979, she stated that her address was 2210 Chateau Drive, an apartment complex *south* of the James River, but also in the City, approximately 18 miles from Havens' apartments. Willis, according to his deposition taken on February 29, 1979, in the *Coles* case, resided at 8 North Sheppard Street, near the Fan

District of the City of Richmond, an urban neighborhood of older single-family row houses, approximately 10 miles from Colonial Court and Camelot. He also owns his home. By contrast, Havens' apartments are modern multi-family developments in a suburban area of Henrico County. Colonial Court has 516 garden apartments; Camelot has 112 townhouse apartments.

These facts, of course, are not presented for their truth, but to emphasize the importance of requiring that facts supporting standing be pled at the district court level with sufficient particularity that a court can reasonably conclude that a plaintiff has standing. Respondents' incorrect suggestion in footnote 19 that Coleman and Willis reside in similar housing to that in Havens' apartments demonstrates that a brief on the merits in the United States Supreme Court is not the proper place to allege the causal nexus required for standing. Such facts must be pled in the district court.

Finally, the Fourth Circuit did *not* hold, as respondents state, "only that the district court's dismissal of the complaint on the pleadings, without giving respondents an opportunity to develop the facts to support their allegation of injury, was improper." Brief for Respondents at 24. Rather, that court held flatly, "All plaintiffs have standing. Willis and Coleman have standing as testers but, even if this were not so, they have alleged sufficient personal harm to give them standing" (App. 68). This decision is clearly wrong and must be reversed.

III. HOME AND COLEMAN LACK STANDING TO BRING THIS ACTION BASED ON A VIOLATION OF SECTION 3604(d) OF THE FAIR HOUSING ACT WHICH IS UNRELATED TO THE CAUSE OF ACTION ASSERTED IN THE COMPLAINT AND FOR WHICH THEY SUFFERED NO COGNIZABLE INJURY.

In this Court, for the first time, HOME and Coleman assert that they have standing to maintain this action under Section 3604(d) of the Fair Housing Act, which provides that it is unlawful:

> To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

42 U.S.C. § 3604(d). Respondents' argument is based on the allegations of paragraph 13 of the Complaint which state that Coleman and white testers received different information concerning the availability of apartments (App. 16-17).

Clearly, the complaint in this case makes out *only* a cause of action against petitioners for racial steering of prospective lessees. Paragraph 1 of the complaint states, "This action involves the pattern and practices of defendants of denying housing on the basis of race and of racial steering" (App. 11), which is defined as deliberately affecting the housing location of members of racial groups because of race (App. 12). Furthermore, paragraph 11 specifies the nature of the alleged violation in terms which refer only to "customers," *i.e.*, actual prospective lessees. Finally, Coleman alleged that she has been denied the benefits of interracial association by the racial steering of prospective lessees and sought to represent a class of persons similarly affected (App. 17). Nowhere in this complaint is there a colorable claim that Coleman or HOME seek to maintain an action against petitioners for violation of Section 3604(d). Even paragraph 13, on which petitioners now seek to rely, is alleged only as *evidence* that petitioners steer prospective lessees (App. 16-17). Thus, it cannot be concluded that HOME and Coleman have maintained an action for violation of Section 3604(d) by this complaint.

Furthermore, it is clear that HOME and Coleman cannot predicate an action on racial steering of prospective lessees and base their standing on an injury which does not result from the asserted unlawful action. This is to say no more than that, when analyzing a plaintiff's standing, there must be a causal connection between the alleged wrongful acts—the acts of

which complaint is made—and the alleged injury.[8] The injury which Coleman would have this Court assume exists as a result of a violation of Section 3604(d) apparently is the receipt of different information from that given to white testers.[9] Brief for Respondents at 28. HOME's asserted injury apparently is the receipt of different information through its two testers.[10] Patently, these injuries, even if cognizable for Article III purposes, do not result from the alleged racial steering which is the subject of the complaint in this case. They result, if at all, from separate violations of Section 3604(d) not alleged in the complaint.

By contrast, of course, this Court has held that a person who is deprived of the benefits of interracial association by a defendant's discrimination—an injury which *results from* that discrimination, although indirectly— may bring an action under the Fair Housing Act which is predicated on those acts of discrimination. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205 (1972). This Court has never held that a plaintiff may ground her standing in acts *other* than those of which complaint is made, as Coleman and HOME here seek to do.

Finally, in the context in which this case arises, the asserted violation of Section 3604(d) does not assist HOME and Coleman in demonstrating standing. Although this Court has held that Congress can eliminate prudential considerations from the standing analysis, *see e.g. Gladstone, Realtors v. Village of Bellwood*, 441 U.S. at 100, Congress cannot deprive this Court of the power and the duty to determine whether

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[8] It is, of course, not to say that there need be a nexus between the *nature* of the injury and the rights asserted, a proposition explicitly rejected as a standing requirement in cases other than taxpayer challenges. *See e.g. Duke Power Company v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 78-79 (1978).

[9] In her brief, Coleman also suggests that this Court presume that "embarrassment, insult and humiliation" are cognizable injuries flowing from a Section 3604(d) violation. Brief for Respondents at 28-29. No such injury is pled, nor can it fairly be presumed to exist in the test situation described in the complaint.

[10] Of course, HOME has no racial identity, and did not receive misinformation because of race.

constitutionally mandated standing limitations are met. "A federal court cannot ignore this requirement without overstepping its assigned role in our system of adjudicating only actual cases and controversies." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 39 (1976).

Coleman tested Havens' compliance with the Fair Housing Act in the course of her employment with HOME. She received certain information as a result of her tests, presumably conveying that information to HOME. By seeking information on whether or not petitioners were steering, and by receiving precisely the information they sought, HOME and Coleman did not acquire any *personal stake* in the outcome of this litigation and did not suffer any personal injury redressable in an action against petitioners.

Thus, Coleman and HOME must base their standing on the alleged injuries, causal connection and remediability previously asserted, not on a violation of Section 3604(d) not alleged in the complaint. As demonstrated in petitioners' brief on the merits, both lack standing.

CONCLUSION

For the reasons stated herein and in petitioners' brief on the merits, the judgment of the Court of Appeals for the Fourth Circuit should be reversed and judgment entered for the petitioners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Reply Brief for Petitioners have been served by mail on Vanessa Ruiz-de-Elejalde, Fried, Frank, Harris, Shriver & Kampleman, 600 New Hampshire Avenue, N.W., Suite 1000, Washington, D.C. 20037, counsel of record for the respondents.

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